STATEMENT/PURPOSE

To determine what action the Town Council may take in order to re-evaluate the process and procedure concerning condominium conversions under the Town of Jackson the Land Development Regulations (“LDR’s”), including consideration of an emergency ordinance and moratorium on acceptance or consideration of condominium conversion applications.

BACKGROUND/ALTERNATIVES

1. Background

The lack of clarity in the LDR’s concerning a process or procedure for apartment or townhome conversions to condominiums has created issues for the Planning Department, the Planning Commission and Town Council in determining how exactly to process such applications. The Interim Planning Director issued an interpretation on August 30, 2007 that, based upon the express language of the LDR’s, a final development plan is required to process a condominium conversion application for the Virginian apartments. This interpretation was appealed by the applicant to the Board of Adjustment, but was withdrawn by the applicant after a decision by the Town Council, based upon legislative intent, to not require a final development plan and to continue the past practice of requiring a final plat and not a final development plan. Special Town Council Workshops were held on August 20, September 17 and October 15, prior to the Town Council’s decision based upon legislative intent.

Subsequent to the Town Council’s decision to not require a final development plan, Staff was directed to prepare a text amendment to the LDR’s (via an ordinance) in order to clarify the process governing condominium conversion applications. Special Town Council Workshops were held on November 19 and December 17 to discuss life-safety and health issues and other considerations for the new ordinance. At the December meeting, the minutes reflect that “tenant protection” issues were also to be addressed by staff in the draft Ordinance, but Staff was not clear what the Town Council actually wanted.

The Planning Department drafted an LDR text amendment to Article 6000 – Final Plat - that was presented to the Planning Commission on January 2, 2008. Certain planning commissioners questioned the procedure of not requiring a final development plan and disagreed with the Town Council’s prior decision. The Planning Commission also felt uncomfortable making any recommendation to the Town Council on the text amendment until it received legal review on the draft tenant protection issues by the Planning Department, which included a tenant relocation provision. The Planning Commission, thus, continued the item indefinitely.
At the January 7, 2008 Town Council meeting, the Town Council discussed the above and scheduled a workshop for January 22, 2008 to discuss the condominium conversion process and procedure with the Planning Commission and the public in an attempt to further evaluate and finalize the appropriate process. The Town Council also directed the Town Attorney to research an emergency ordinance and/or moratorium as a result of three new conversion applications and the need to research, modify and finalize a procedure for such applications.

2. Alternatives for action by the Town Council and Mayor

Alternatives for action by the Town Council and Mayor regarding the condominium conversion regulation, or lack thereof, include the following:

A) Promulgate an Emergency Ordinance

The Town has the power to promulgate emergency ordinances as set forth in W.S.§ 15-1-115. An emergency ordinance is defined under Wyoming Statute 15-1-101(a)(iii) as an “ordinance operating for the immediate preservation of the public peace, health, safety or welfare, in which the emergency is defined.”

With an emergency ordinance, the requirements or public reading may be suspended by the affirmative vote of three-fourths (3/4) of the qualified members of the governing body. W.S. § 15-1-115 (c). Passage of an emergency ordinance also requires the affirmative vote of three-fourths (3/4) of the qualified members of the governing body. W.S. § 15-1-115(d). Emergency ordinances are effective upon proclamation of the mayor, and as soon thereafter as is practicable they shall be published and posted in the manner required of other ordinances. W.S. § 15-1-116(a).

If the emergency ordinance is questioned and/or a lawsuit filed questioning its legality, the district court would perform an examination of the record to see if the Council exceeded its powers or acted fraudulent, arbitrarily or capriciously in determining whether an emergency ordinance was necessary and the terms of the ordinance. See Blount v. City of Laramie, 510 P.2d 294 (Wyo. 1973).

A draft form of an emergency ordinance placing a moratorium on applications for a condominium conversion is attached hereto for discussion.

B) Amend the LDR’s re Condominium Conversion Via Ordinance

The Town has the power to amend ordinances under W.S.§ 15-1-117. The Town, thus, can amend the LDR’s by emergency ordinance if it so chooses. The LDR’s also provide that the Planning Director, the Planning and Zoning Commission/ Board of Adjustment or Town Council may propose text amendments to the LDR’s. See LDR’s, section 5150.

a. The process to make a text amendment is governed by section 5150.C(2) of the LDR’s as follows:

   a) The Planning and Zoning Commission (“Commission”) shall conduct a public hearing on application for text amendment to the LDR’s.

   b) At the public hearing the Commission shall consider the application, the relevant support materials, the Staff Report and the public statements given at the public hearing.

   c) No later than 30 calendar days after the close of the public hearing, the Commission shall recommend to the Town Council either to approve or disapprove the application based on the standards in Section 5150.D-F.
d) After recommendation of the Commission, the Town Council shall conduct a public hearing on the application. At the public hearing the Town Council shall consider the application, the relevant support materials, the Staff Report, the Commission recommendation, and the public statements given at the public hearing.

e) No later than 30 calendar days after the close of the public hearing, or such other period of time as the applicant may agree, the Town Council shall either approve or disapprove the application based upon the standards of Section 5150.D-F by a simple majority vote.

b. The standards for consideration of text amendment should be followed in order to legally defend reasons for amendments as follows:

Section 5150.D provides General Standards that shall be consistent with the following:

1. Consistent with purposes of LDR’s
2. Consistent with the Comprehensive Plan
3. Consistent with LDR’s
4. Consistent with other Town Codes.

Section 5150.F provides standards for review of amendments to the text of LDR’s and that such may be approved for reasons including but not limited to:

1. Implements Comprehensive Plan
2. Better achieves Comprehensive Plan goals and objectives
3. Existing LDR’s unreasonable or inconsistent in light of standards for similar uses
4. Responds to State or Federal legislation rendering LDR’s obsolete
5. Additional flexibility in meeting the objectives of the LDR’s.

ATTACHMENTS

Draft Emergency Ordinance

FISCAL IMPACT

None at this time.

STAFF IMPACT

None at this time.
LEGAL REVIEW

This issue has been reviewed at length by the Town Attorney, in consultation with other professionals in the legal field as well as the Planning field. The Town Council has the legal authority to pass this emergency ordinance placing a moratorium on the acceptance, consideration, and issuance of condominium conversion applications as well as to suspend any requests currently in process.

RECOMMENDATION

If the Town Council deems an emergency ordinance and moratorium necessary, the Town Attorney recommends approval of the attached Ordinance placing a 180 day temporary moratorium on the acceptance or consideration of condominium conversion applications, declaring an emergency, providing for an effective date and a time for termination.

SUGGESTED MOTION

I move to approve Ordinance ___attached hereto placing a 180 day temporary moratorium on the acceptance or consideration of condominium conversion applications, declaring an emergency, providing for an effective date and a time for termination.
ORDINANCE

AN ORDINANCE PLACING A 180 DAY TEMPORARY MORATORIUM ON THE ACCEPTANCE OR CONSIDERATION OF CONDOMINIUM CONVERSION APPLICATIONS; DECLARING AN EMERGENCY, PROVIDING FOR AN EFFECTIVE DATE AND A TIME FOR TERMINATION.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED, THAT:

SECTION I.

The Town of Jackson does hereby impose a one hundred and eighty (180) day temporary moratorium on the submission, acceptance or consideration of condominium conversion applications to the Town of Jackson. The purpose of this ordinance is to allow time to study the provisions, history and legislative intent of the Town of Jackson Land Development Regulations as they relate to condominium conversions within the Town of Jackson, including: the health, safety and/or welfare of the citizens of Jackson in connection with such conversions; the land-use impact and other impacts to the Town of Jackson and its citizens as a result of conversions of apartments to condominiums, including but not limited to the loss of rental units to the citizens of Jackson; whether and how to regulate condominium conversions, including but not limited to life-safety and/or tenant protection issues; and to determine whether procedures and policies regarding condominium conversions are consistent with the purposes and intent of the Town of Jackson Land Development Regulations and the Jackson-Teton County Comprehensive Plan.

SECTION II.

The provisions of this ordinance are effective through July 13, 2008, unless sooner repealed, after which time they shall become null and void.

SECTION III.

This ordinance shall apply to any condominium conversions applications already submitted or pending at the time of ordinance adoption.

SECTION IV.

If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION V.

Adoption of this ordinance shall be by emergency ordinance provisions under suspension of rules and approved by not less than three quarters (3/4) of the qualified members of the
governing body as required and set forth in Section § 15-1-115 Wyoming Statutes. This ordinance shall take effect immediately upon proclamation by the Mayor.

PASSED the ____ day of _______, 2008.

TOWN OF JACKSON

BY: ________________________
   Mark Barron, Mayor

____________________________
Roxanne DeVries Robinson, Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING )
   ) ss.
COUNTY OF TETON )

I hereby certify that the foregoing Ordinance No. ____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming on the _________ day of __________________, 2008.

I further certify that the foregoing ordinance was duly recorded on Page ___ of Book __________ of the Ordinances of the Town of Jackson, Wyoming.

____________________________
Roxanne DeVries Robinson, Town Clerk